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Cleaning Up the Act - the Illinois Domestic Workers' Bill of Rights Act: Necessity, Purpose, and Effect

Joanna Pawlowska

Domestic workers frequently encounter negative experiences while on the job. Every day, such employees are subjected to deplorable conditions while working for less than the minimum wage in order to provide financial support for their families. For example, recently, the U.S. Department of Labor filed a complaint on behalf of an employee against her former employer, alleging that the employer forced her to sleep with the family's dogs and work 15-and-a-half-hour work days while cleaning homes in San Juan Capistrano, Miami, Las Vegas and Long Beach.¹ In Illinois, Aurelia Aguilar cleaned homes without being guaranteed payment or allowed a lunch break or glass of water during nine-hour shifts.² Magdalena Zylinska worked while recovering from a car accident and on days in which she was ill.³ Maria Bolaños took on jobs that paid as little as four dollars an hour.⁴ Isabel Mendez endured verbal abuse⁵ while working as a domestic worker, and was fired from her position though being owed \$10,000, after which she had to sue her employer to recover her earnings.⁶ These are just some of the stories of domestic workers who face inequality, abuse, degradation, and wage theft in their workplace.

Until recently, domestic workers were either denied basic protections under federal and state labor laws or faced enormous difficulty in obtaining legal remedies for mistreatment by their employers. In Illinois, however, on August 21, 2016, after a five-year grassroots campaign to gain legal protections for domestic workers,⁷ Governor Bruce Rauner signed into law the Domestic

¹ Hannah Mandans, *CEO accused of mistreating domestic worker, making her work 15-hour days, sleep with dogs*, THE ORANGE COUNTY REG. (Sept. 7, 2016), <http://www.ocregister.com/articles/bhatia-728247-ningwal-labor.html>.

² Stories, ILL. DOMESTIC WORKERS COAL., <http://www.respectallwork.org/stories.html> (last visited Mar. 23, 2017).

³ *Id.*

⁴ *Id.*

⁵ DomesticWorkers, *Illinois Domestic Worker Isabel Mendez on HB 1288*, YOUTUBE (Apr. 11, 2016), <https://www.youtube.com/watch?v=XXC3GEXnZ5M>.

⁶ ILL. DOMESTIC WORKERS COAL., *supra* note 2.

⁷ Paul Nyhan, *Illinois Domestic Workers Win Wage Victory with Bill of Rights*, EQUAL VOICE (Aug. 17, 2016), <http://www.equalvoiceforfamilies.org/illinois-domestic-workers-win-wage-victory-with-bill-of-rights/>.

Workers' Bill of Rights Act (hereinafter "Act").⁸ Going into effect on January 1, 2017, the Act amended four state laws to include protections for domestic workers, including granting domestic workers a minimum wage, protection against sexual harassment, and one day of rest per week for workers employed by one employer for at least 20 hours a week.⁹

The Need for State Legislation

Domestic workers' exclusion from labor laws stems from a long history of racism and anti-immigrant sentiment.¹⁰ Domestic work, such as food preparation, laundry, childcare, and other household tasks, was historically a service performed by enslaved African American women.¹¹ After slavery was abolished, however, this trend to employ women continued, particularly in the South.¹² Throughout the 1900s, globalization led to an influx of immigrants, who readily assumed the role of domestic workers in society.¹³ In an effort to prevent a predominantly African American and immigrant workforce from gaining economic and political power, when the Fair Labor Standards Act (hereinafter "FLSA") was enacted in 1938, it excluded domestic workers from the protections guaranteed to other employees.¹⁴ This meant that employers of domestic workers were not required by law to pay a minimum wage or to comply with overtime requirements.¹⁵ It was not until 1974 that the FLSA was amended to include domestic workers as a covered class of individuals, but even then, the legislature qualified these protections by excluding three subsections of domestic workers from certain protections:¹⁶ live-in domestic workers,

⁸ Melissa McDonagh & Angelo Spinola, *Illinois Expands Employment Rights to Domestic Workers*, SOC'Y FOR HUM. RESOURCE MGMT. (Sept. 27, 2016), <https://www.shrm.org/resourcesandtools/legal-and-compliance/state-and-local-updates/pages/illinois-domestic-workers.aspx>.

⁹ Terrance Heath, *Victory for Domestic Workers in Illinois*, OURFUTURE (Aug. 17, 2016), <https://ourfuture.org/20160817/victory-for-domestic-workers-in-illinois>.

¹⁰ Alexia Elejalde-Ruiz, *Rauner signs law extending labor protections to domestic workers*, CHI. TRIB. (Aug. 15, 2016), <http://www.chicagotribune.com/business/ct-rauner-signs-domestic-workers-bill-0816-biz-20160815-story.html>.

¹¹ Terri Nilliasca, *Some Women's Work: Domestic Work, Class, Race, Heteropatriarchy, and the Limits of Legal Reform*, 16 MICH. J. RACE & L. 377, 384 (2011).

¹² *Frequently Asked Questions*, ILL. DOMESTIC WORKERS COAL., <http://www.respectallwork.org/faq.html> (last visited Mar. 23, 2017).

¹³ *Id.*

¹⁴ Rachel Homer, *An Explainer: What's Happening with Domestic Workers' Rights?*, ONLABOR (Nov. 6, 2013), <https://onlabor.org/2013/11/06/an-explainer-whats-happening-with-domestic-workers-rights/>.

¹⁵ *Id.*

¹⁶ *Id.*

who are excluded from overtime provisions;¹⁷ child-care workers, who are excluded from both the minimum wage and overtime provisions;¹⁸ and domestic workers providing companionship services for individuals unable to care for themselves, who are also excluded from both the minimum wage and overtime provisions.¹⁹

Today, the domestic services workforce is composed mainly of immigrant women of color.²⁰ Studies conducted by the Department of Labor estimate that as of 2013, there were almost two million domestic workers providing direct care, such as home health aides, personal care aides, and certified nursing assistants.²¹ Additional studies conducted by the National Domestic Workers Alliance estimate that there are approximately 800,000 domestic workers employed by households in the United States.²² A study conducted by the Census Bureau estimates that 95 percent of domestic workers are women, 46 percent are immigrants, 54 percent are nonwhite, and 35 percent are non-citizens.²³ Despite the fact that domestic workers make up such a significant percentage of our country's population, such employees continue to be unprotected by federal laws. Just as the FLSA fails to offer protections for certain classes of domestic workers, the National Labor Relations Act explicitly bars domestic workers from forming unions or bargaining collectively.²⁴ Federal anti-discrimination laws such as the Civil Rights Act, the Americans with Disabilities Act, and the Age Discrimination in Employment Act specifically exclude a majority of domestic workers from their scope.²⁵ Moreover, despite the frequent incidence with which domestic workers use toxic products, they are ex-

¹⁷ 29 U.S.C. § 213(b)(21) (2014).

¹⁸ 29 U.S.C. § 213(a)(15) (2014).

¹⁹ *Id.*

²⁰ Maggie Caldwell, *Invisible Women: The Real History of Domestic Workers in America*, MOTHER JONES (Feb. 7, 2013), <http://www.motherjones.com/politics/2013/02/timeline-domestic-workers-invisible-history-america>.

²¹ News Release, Minimum Wage, Overtime Protections Extended to Direct Care Workers by US Labor Department, U.S. DEP'T OF LABOR, <https://www.dol.gov/newsroom/releases/whd/whd20131922> (last visited Mar. 23, 2017).

²² Homer, *supra* note 14.

²³ Steven Greenhouse, *A Study of Home Help Finds Low Worker Pay*, N.Y. TIMES (Nov. 26, 2012), <http://www.nytimes.com/2012/11/27/business/a-study-of-home-help-finds-low-worker-pay-and-few-benefits.html>.

²⁴ *Home Economics, The Invisible and Unregulated World of Domestic Work*, NAT'L DOMESTIC WORKERS ALL., 9, <https://www.domesticworkers.org/sites/default/files/HomeEconomicsEnglish.pdf> (last visited Mar. 23, 2017).

²⁵ *Id.*

cluded from the protections offered by the Occupational Safety and Health Act.²⁶

Lobbying for the Act in Illinois

Anna Jakubek, a domestic worker organizer at Arise Chicago, states that the lack of protection afforded to domestic workers by the aforementioned federal laws, in particular, the failure of the FLSA to protect domestic workers from unfair labor practices, was one of the driving forces in the organization's involvement in advocating for the enactment of a state law to protect the basic rights of domestic workers.²⁷ However, Arise Chicago was not the only organization involved in advocating for the passage of a state law; the movement required collaboration among a number of organizations, including the Domestic Workers Alliance, the Sargent Shriver National Center on Poverty Law, the Heartland Alliance, and Women Employed.²⁸

Ms. Jakubek describes the legislative process as taking multiple attempts over a span of three years and various amendments.²⁹ Despite the incredible support provided by these organizations on behalf of domestic workers in Illinois, Bill 1288 (hereinafter "Bill") did not pass the first time it was introduced in Springfield.³⁰ When first introduced in February of 2013 by Senator Ira Silverstein,³¹ the Bill was met with opposition by both the Senate and House of Representatives.³² It was not until the Bill was introduced in February of 2015 by Representative Michael J. Madigan, and sponsored by Senator Ira Silverstein and Representative Elizabeth Hernandez, that the lobbying efforts of the organizations were recognized, and the Bill was passed by both houses and approved by Governor Rauner.³³

A Closer Look at the Act and its Effects

Bill 1288 was codified in Illinois law as the Illinois Domestic Workers' Bill of Rights Act.³⁴ Modeled closely after New York's Domestic Workers' Bill of

²⁶ *Id.*

²⁷ Telephone Interview with Anna Jakubek, Domestic Worker Organizer, Arise Chicago (Mar. 17, 2017).

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ S.B. 1708, 98th Gen. Assemb., Reg. Sess. (Ill. 2013).

³² Telephone Interview, *supra* note 27.

³³ H.B. 1288, 99th Gen. Assemb., Reg. Sess. (Ill. 2016).

³⁴ 820 ILL. COMP. STAT. ANN. 182/21 (West 2017).

Rights,³⁵ which was passed on July 1, 2010,³⁶ Illinois joins only six other states that have passed legislation protecting the rights of domestic workers, including New York, California, Massachusetts, Connecticut, Hawaii, and Oregon.³⁷

According to Ms. Jakubek, the Illinois Domestic Workers' Bill of Rights Act addresses some of the most pervasive issues that domestic workers face.³⁸ In its Purpose and Findings section, the Act recognizes that "domestic workers are among the most isolated and vulnerable workforce in the State," and that despite their "critical role in Illinois' economy. . . domestic workers have historically been excluded from the protections under State law extended to workers in other industries."³⁹ Furthermore, the legislature recognizes that without clear standards, decent pay, and other workplace protections, the domestic services workforce will be unable to meet the needs of Illinois families.⁴⁰ Thus, the legislature concludes that "because domestic workers care for the most important elements of Illinoisans' lives, our families and our homes, it is in the interest of employees, employers, and the people of Illinois to ensure that the rights of domestic workers are respected, protected, and enforced, and that this Act shall be interpreted liberally to aid this purpose."⁴¹

First and foremost, the Act clarifies the scope of eligibility for coverage by clearly defining who qualifies as a domestic worker. Under the Act, any individual performing domestic work, including housekeeping; house cleaning; home management; nanny services; caregiving, personal care or home health services for elderly, ill, injured or disabled persons; laundering; cooking; companion services; and chauffeuring qualifies for protection.⁴² While this list is not exhaustive, a fundamental requirement for eligibility is that the domestic work be performed in homes or private residences.⁴³ In contrast, workers involved in domestic work for other family members; child and day care home providers; workers that provide less than eight hours of domestic work per private home (excluding those domestic worker providing caregiving, companion services, or personal care or home health services for the elderly, ill, injured

³⁵ Telephone Interview, *supra* note 27.

³⁶ *New York Bill of Rights, Labor of Love: New York Domestic Worker Convention*, NAT'L DOMESTIC WORKERS ALL., <https://www.domesticworkers.org/new-york-bill-of-rights> (last visited Mar. 23, 2017).

³⁷ Heath, *supra* note 9.

³⁸ Telephone Interview, *supra* note 27.

³⁹ 820 ILL. COMP. STAT. ANN. 182/5 (West 2017).

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² 820 ILL. COMP. STAT. ANN. 182/10 (West 2017).

⁴³ *Id.*

or disabled persons), residence or other location; and workers who operate as sole proprietors or in partnerships are not eligible for protection under the Act.⁴⁴

Specifically, the Act amends four state laws, including the Illinois Human Rights Act, the One Day of Rest in Seven Act, the Wages of Women and Minors Act, and the Illinois Minimum Wage Law.⁴⁵

Thanks to the Act, domestic workers will now be protected under the anti-discriminatory Illinois Human Rights Act, which previously only applied to employers employing 15 or more employees during a certain period.⁴⁶ Specifically, domestic workers will be protected from employment-related discrimination and retaliation based on characteristics including age, sex, national origin, pregnancy, religion, ancestry, marital status, sexual orientation, race, color, disability or military service.⁴⁷

Furthermore, the One Day of Rest in Seven Act was amended so as to ensure that domestic workers employed for more than 20 hours per week by one employer were provided at least 24 hours of rest per week, with the intention that the day coincide with the traditional day for the worker's religious worship.⁴⁸ If the domestic worker agrees to work on the employee's day of rest, the domestic worker must be compensated at an overtime rate.⁴⁹ The Act also provides that domestic workers must receive a 20-minute rest period for every seven and a half hours worked for the employer.⁵⁰

The Illinois Wages of Women and Minors Act was amended to extend domestic workers, particularly women and minors, fair wage rights.⁵¹

Finally, the Act provides that domestic workers will be subject to the Illinois Minimum Wage Law, which requires that domestic workers employed for at least two hours within a two-week period in Chicago be paid the minimum

⁴⁴ *Id.*

⁴⁵ Nyhan, *supra* note 7.

⁴⁶ McDonagh & Spinola, *supra* note 8.

⁴⁷ 775 ILL. COMP. STAT. ANN. 5/1-102 (West 2015).

⁴⁸ 820 ILL. COMP. STAT. ANN. 140/2 (West 2017).

⁴⁹ *Id.*

⁵⁰ Steven J. Pearlman & Sunghee Sohn, *Illinois Domestic Workers Now Guaranteed Certain Employment Rights*, LAW & THE WORKPLACE (Aug. 23, 2016), <http://www.lawandtheworkplace.com/2016/08/illinois-domestic-workers-now-guaranteed-certain-employment-rights>.

⁵¹ 820 ILL. COMP. STAT. ANN. 125/1 note (West 2017) (deletion of "domestic service in the home of the employer or" from preceding "labor" in the following definition: "'Occupation' means an industry, trade or business or branch thereof or class of work therein in which women or minors are gainfully employed, but does not include labor on a farm").

wage as set by the state or by Chicago's Minimum Wage Ordinance, whichever is higher.⁵² Currently, this requires workers to be paid at least \$8.25 an hour.⁵³

Next Steps

The Illinois Domestic Worker's Coalition expects that approximately 35,000 domestic workers in Illinois will benefit from the Act's passage.⁵⁴ However, Ms. Jakubek reports that the Act is now in a "testing phase," meaning that it is yet to be seen whether the Act will fulfill its intended purpose.⁵⁵ Ms. Jakubek states that in order to ensure that domestic workers take advantage of the protections now offered, it is first necessary that individuals *learn* of their rights under the law.⁵⁶ Consequently, Arise Chicago encourages members of the community to attend workshops for employees and employers to teach them about their rights and obligations under the law.⁵⁷ Ms. Jakubek reports that since the Act's effective date, the number of claims reported to the organization have increased significantly.⁵⁸ Hopefully this trend will continue, providing additional avenues for recovery for the injustices that domestic workers have suffered. As Ms. Jakubek explains, domestic workers play a critical role in Illinois' economy, and deserve not only equality under state labor laws, but also to have their significant contribution to society be recognized and their dignity restored.⁵⁹

⁵² Pearlman & Sohn, *supra* note 50.

⁵³ Elejalde-Ruiz, *supra* note 10.

⁵⁴ Pearlman & Sohn, *supra* note 50.

⁵⁵ Telephone Interview, *supra* note 27.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*